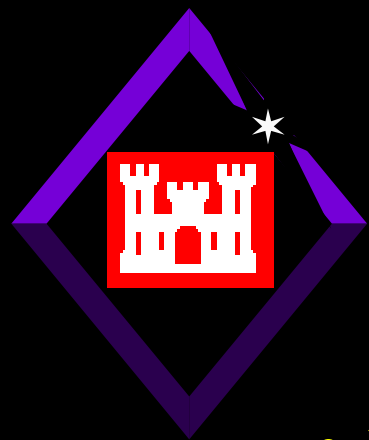


# **USACE LEGAL SERVICES WORKSHOP**

**DOUG LAMONT**

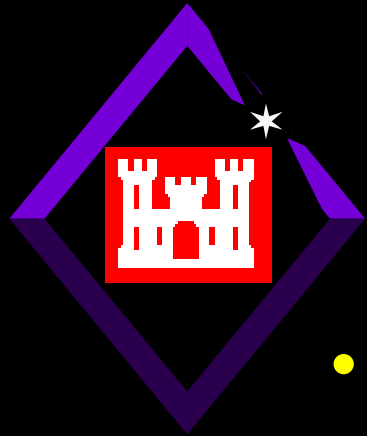
**POLICY REVIEW BRANCH**



## FY96 Washington Level Review Workload

- 1 Oct 95 - 30 Sep 96: 305 Reviews Completed

- 32 Recon Reports
- 12 Draft Feasibility Reports
- 16 Final Feasibility Reports
- 4 Major Rehab Reports
- 68 Other Reports
- 50 PCA's
- 39 Other Agreements
- 23 Conference Review Actions
- 14 Continuing Authorities
- 29 Design Memoranda
- 18 Reevaluations
- **WLRC: 136 Decision Documents per Calendar Year (Average)**



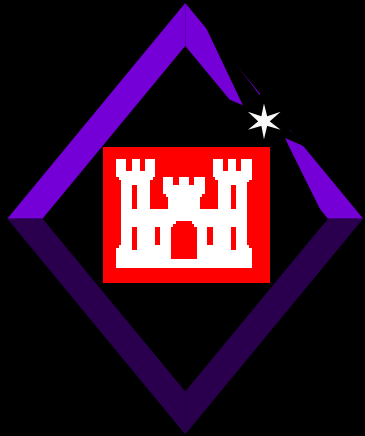
# FY97 Washington Level Review Workload

## • 1 Oct 96 - 30 Sep 97: 383 Reviews Completed

- 30 Recon Reports
- 4 Draft Feasibility Reports
- 12 Final Feasibility Reports
- 8 Major Rehab Reports
- 71 Other Reports
- 91 PCA's
- 55 Other Agreements
- 29 Conference Review Actions
- 10 Continuing Authorities
- 11 Design Memoranda
- 27 Reevaluations
- 35 Responses to Assessment Cmts

• Other Activities - Numerous Review Follow-Ups,  
Guidance Reviews and OASA(CW) & OMB Briefings

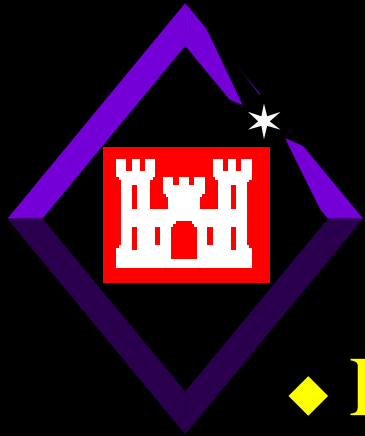
# Current Washington Level Review Workload



## ◆ 1 Oct 97 - 31 Mar 98: 220 Reviews Completed

- 10 Recon Reports
- 8 Draft Feasibility Reports
- 5 Final Feasibility Reports
- 0 Major Rehab Reports
- 30 Other Reports
- 56 PCA's
- 43 Other Agreements
- 22 Conference Review Actions
- 2 Continuing Authorities
- 6 Design Memoranda
- 11 Reevaluations
- 27 Responses to Assessment Cmts

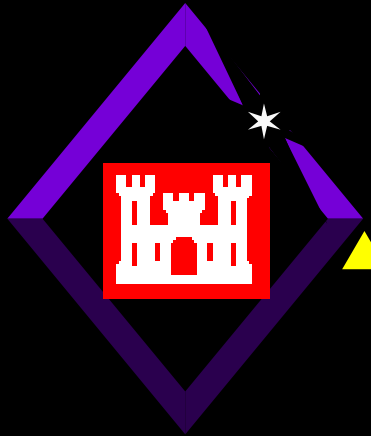
## ◆ Other Activities - Candidate WRDA '98 Authorizations, Policy Guidance Reviews and OASA(CW) and OMB Briefings



# Current Washington Level Review Staff

## ◆ Report Review Staff:

- 1 Senior Review Manager
- 1 Senior Review Manager - on Developmental Assignment
- 5 Formulation/Economics Review Managers
- 1 Formulation/Economics Review Manager - on Developmental Assignment
- 3 Environmental Review Managers



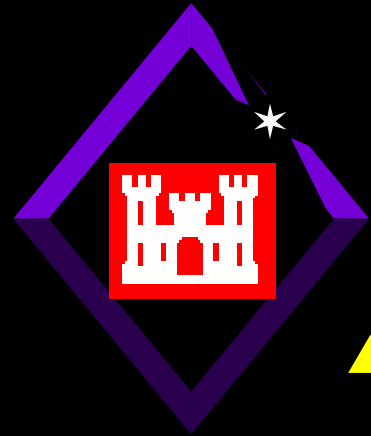
# Current Washington Level Review Staff

## ▲ PCA Review Staff

- 1 PCA Senior Review Manager - VACANT
- 2 PCA Review Managers

## ▲ Other HQUSACE Elements

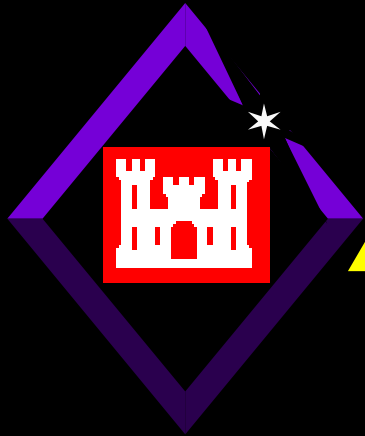
- 1 Senior Counsel for Civil Works
- 1 Assistant Counsel for Civil Works
- 1 Civil Engineer (Engr. & Operations Div)
- 1 Budget Specialist (Programs Division)
- 5 Part Time Real Estate Attorneys (one for each area of responsibility)



## PCA GUIDANCE

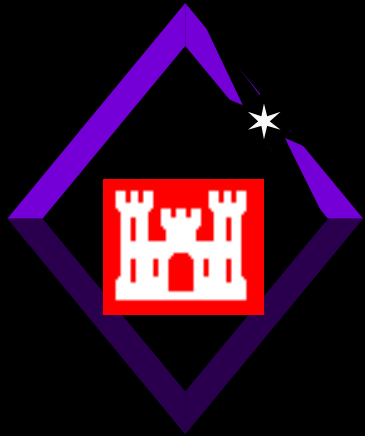
- ▲ ER 1165-2-131; Local Cooperation Agreement for New Start Construction Projects
- ▲ CECW-AG Memorandum, 20 March 1995, “Delegation of Authority to Execute Project Cooperation Agreements”; Enclosure 2 is PCA Checklist

## PCA GUIDANCE



- ▲ CECW-LCECW-E Memorandum, 17 November 1992, “Development and Approval Process for Project Cooperation Agreements (PCA’s)”
- ▲ CECW-A/CECW-B Memorandum, 27 May 1997, “Decision Document and Project Cooperation Agreements (PCA’s) for Congressional Adds for Specifically Authorized Projects”

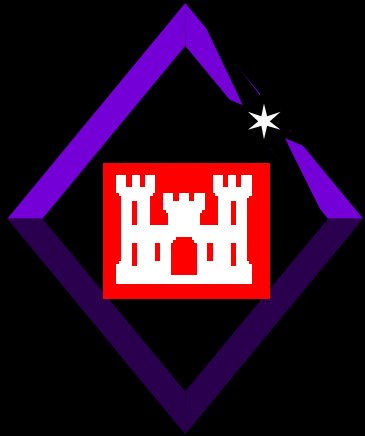




**EC 1165-2-204**

**Processing PCA's for Specifically  
Authorized Projects & Separable  
Elements**

- ◆ Decision Document Supporting PCA
  - ◆ Each PCA, including PCA amendments, must be based on a decision document
  - ◆ Applies to budgeted and Congressionally added new construction starts

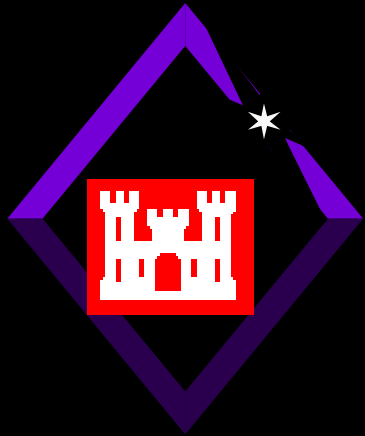


**EC 1165-2-204**

**Processing PCA's for Specifically  
Authorized Projects & Separable  
Elements**

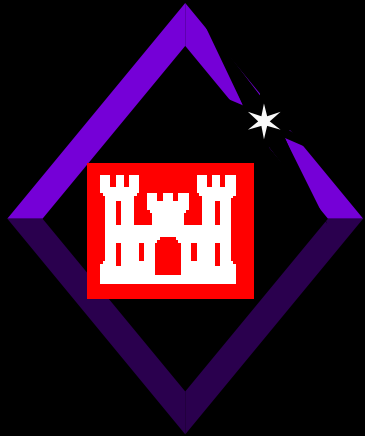
- ◆ **Decision Documents must address:**
  - ◆ Authority
  - ◆ Scope of the Project
  - ◆ Current economics
  - ◆ Changes from last approved decision document

**EC 1165-2-204**



**Processing PCA's for Specifically  
Authorized Projects & Separable  
Elements**

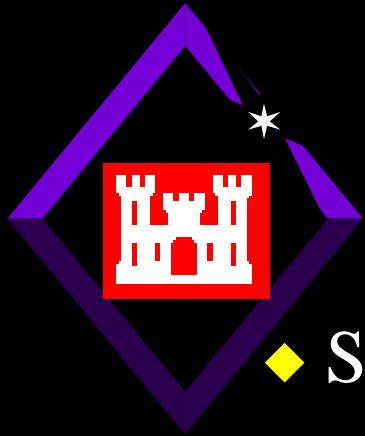
- ◆ Unusual aspects such as Work-In-Kind, betterments, mitigation, or locally preferred plan
- ◆ Federal/Non-Federal cost sharing allocations
- ◆ M-CASES cost estimate
- ◆ Certification of NEPA compliance



**EC 1165-2-204**

**Processing PCA's for Specifically  
Authorized Projects & Separable  
Elements**

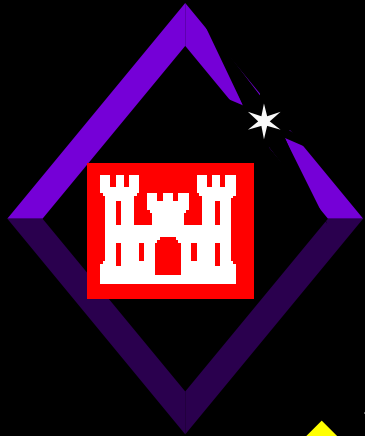
- ◆ Identification of project cooperation requirements for construction and OMRR&R
- ◆ Reaffirmation of sponsor's willingness and financial capability to participate



# DEVELOPMENT OF DRAFT PCA

## INITIAL DRAFT PCA

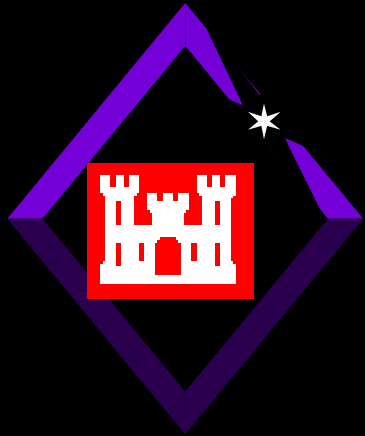
- ◆ Should not be an enclosure to decision document
  - ◆ FRC should include an agenda item to ensure a sponsor understands cost sharing and project cooperation requirements
- ◆ Should be based upon an approved Model PCA
  - ◆ If no model available, adapt from structural flood control model
  - ◆ Call CECW-AR to see if there is a recently executed PCA for a similar project



# DEVELOPMENT OF DRAFT PCA

## INITIAL DRAFT PCA

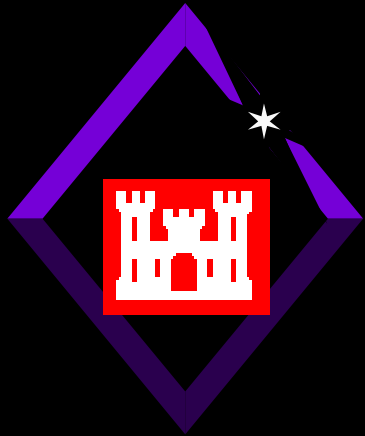
- ◆ PM's responsible for managing PCA development and negotiation
  - ◆ PCA's should be prepared only by individuals trained in preparation of PCA's
  - ◆ Must be closely coordinated and certified by district before submittal to Washington



## NEGOTIATING DRAFT PCA'S

### ◆ DISTRICTS MAY BEGIN FORMAL NEGOTIATION WHEN:

- ① Washington level review of decision documents is complete, and
- ② Either President's budget requesting initial construction funds has been released or for Congressional adds, funds have been appropriated and the VTC MFR has been approved

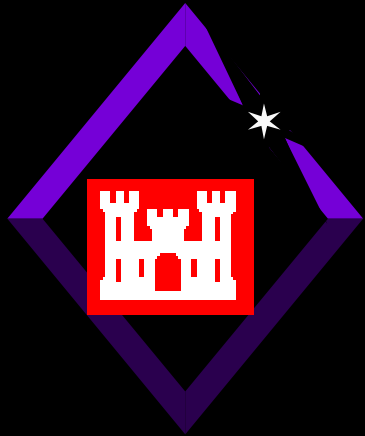


## **NEGOTIATING DRAFT PCA'S**

### **NEGOTIATION TO BE CONDUCTED BY SMALL INTERDISCIPLINARY TEAM**

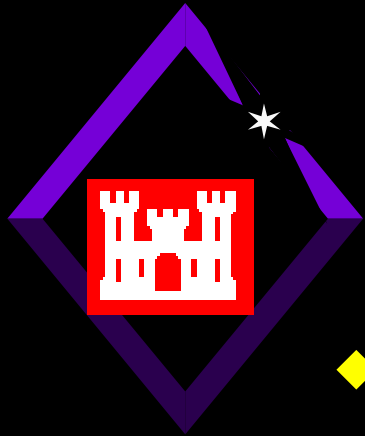
- ◆ Selected by PM
- ◆ Minimum team includes PM, attorney, and cost engineer
- ◆ Corps members must be able to explain legal and policy constraints
- ◆ Sponsor must communicate its constraints





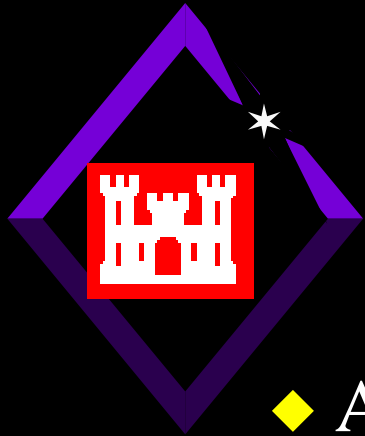
## **NEGOTIATING DRAFT PCA'S NEGOTIATION TO BE CONDUCTED BY SMALL INTERDISCIPLINARY TEAM**

- ◆ Any proposed deviations from cost sharing, financing, and other policies should be addressed and resolved in decision document
- ◆ Negotiations cannot commit district to positions unacceptable to Chief of Engineers or ASA(CW)
- ◆ Should major, unresolved issues arise, PM should consult MSC and CECW-AR



## **SIGNIFICANT PROJECTS WITH CONGRESSIONAL INTEREST**

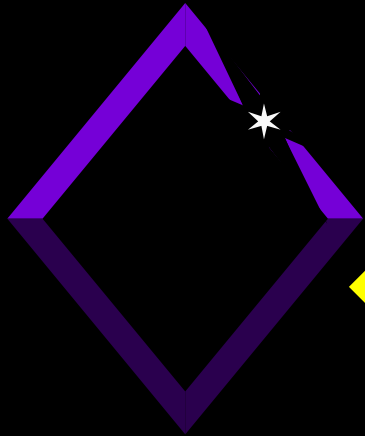
- ◆ District Commanders should keep Congressional delegations informed and invite them and ASA to signing ceremonies
- ◆ Any intentions of a signing ceremony should be noted in transmittal memo and arranged in coordination with appropriate Assistant Director of Civil Works



## **PCA'S REQUIRING WASHINGTON LEVEL REVIEW**

- ◆ All NEPA requirements have been met
- ◆ District Counsel has reviewed and certified legal sufficiency
- ◆ Submit hard copy and electronic file of draft PCA

# HQUSACE PCA REVIEW

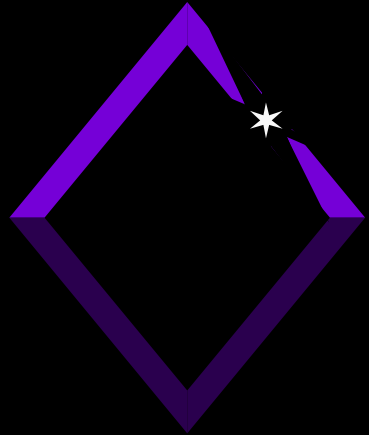


- ◆ PCA Package Received:
  - ◆ Initial package screened for completeness
  - ◆ Incomplete packages returned noting additional items required
- ◆ With a complete PCA package, the PCA is logged into System
  - ◆ PCA Team assigned
    - ◆ Lead PCA Reviewer plus members from CW-AR-M, CW-AR-E, Counsel, Real Estate, Programs



## HQUSACE PCA REVIEW

- ◆ Target Times assigned (60-day overall goal for total Washington Level approval)
- ◆ 30-days for review team comments back to District
- ◆ E-mail of comments back to field with formal follow-up memo



# HQUSACE PCA REVIEW

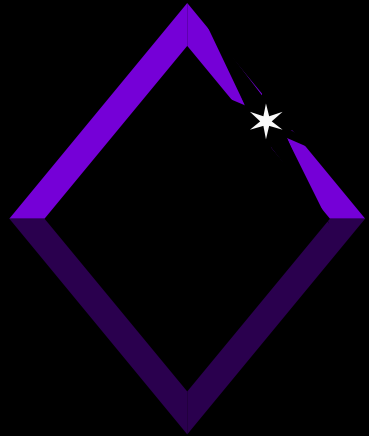
Focus is on having:

- ◆ ER 1165-2-131 Appendix B Breakdown of Federal/non-Federal costs/credits
- ◆ Confirming project authorization and CG funding availability
- ◆ Project Description in PCA matching Decision Document



# HQUSACE PCA REVIEW

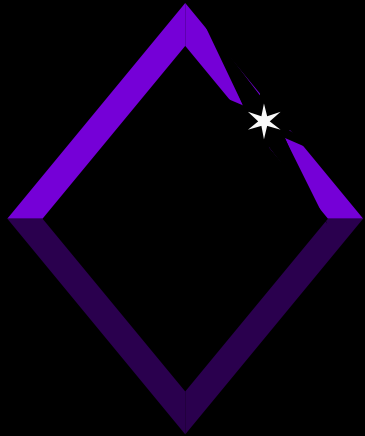
- ◆ Completed PCA Checklist
  - ◆ No open NEPA Issues
- ◆ Complete Financing Plan
  - ◆ Key is clear indication of
  - ◆ availability of funds
- ◆ MCACES Cost Estimate



## HQUSACE PCA REVIEW

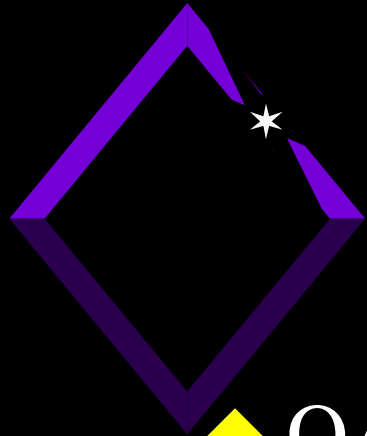
- ◆ List of deviations from Model PCA  
(reference which model) and  
explanation of why requested  
and need





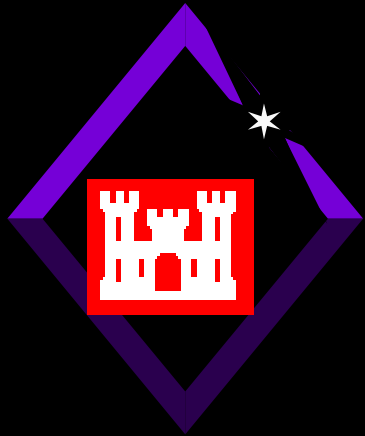
## HQUSACE PCA REVIEW

- ◆ District coordinates any changes with Sponsor
  - ◆ Get Sponsor concurrence or request further clarification needed
- ◆ Resubmission to CW-AR
  - ◆ Memo prepared to OASA(CW) transmitting two copies of PCA, PCA Checklist and Financing Plan -- requesting ASA(CW) approval



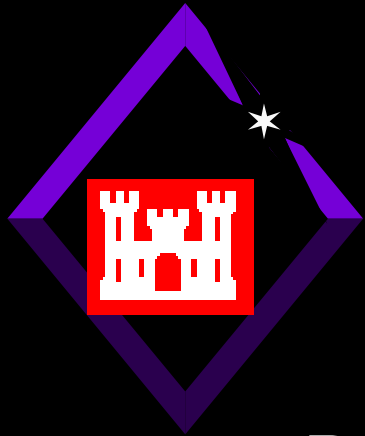
## HQUSACE PCA REVIEW

- ◆ OASA(CW) Review -- reviewed by  
Principal Assistant for Water Resources  
and AGC
- ◆ OASA(CW) Approves
  - ◆ Memo from ASA(CW) to Director  
of Civil Works



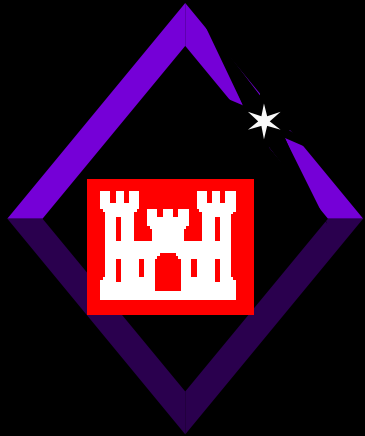
## **PCA MANAGEMENT AFTER ASA(CW) APPROVES PCA**

- ◆ CECW-AR electronically notifies MSC and district followed up by written correspondence
- ◆ Record of OASA(CW) approved PCA must be maintained in CECW-AR and district files



## **PCA MANAGEMENT AFTER ASA(CW) APPROVES PCA**

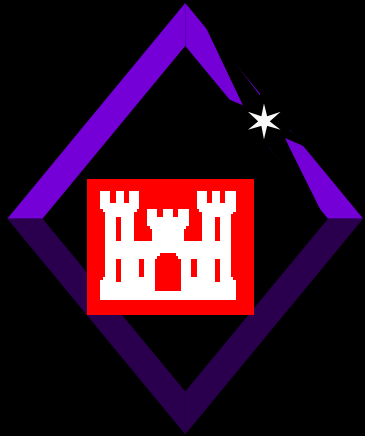
- ◆ District has **21** days to execute after date of CECW-AR written notification with no deviations from OASA(CW)-approved PCA
- ◆ If suspense cannot be met, district must advise CECW-A of the slip and identify changed conditions and course of resolution



## PCA MANAGEMENT

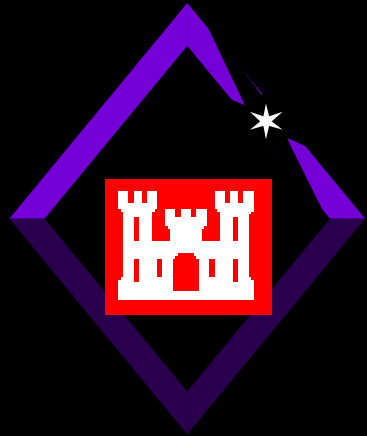
### AFTER ASA(CW) APPROVES PCA

- ◆ MSC and District Commanders **do not** have authority to make unapproved changes with exception of typos, revising project cost estimates in accordance with an approved SACCR, and changing first/last paragraph of PCA and signature block for Commander's signature



## **PCA MANAGEMENT AFTER ASA(CW) APPROVES PCA**

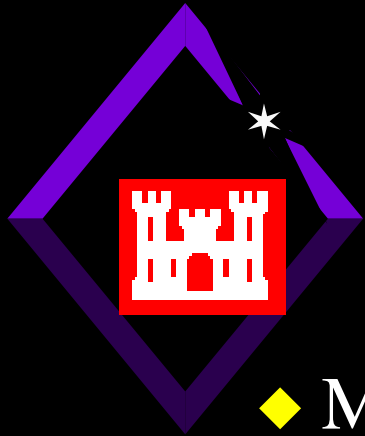
- ◆ NLT 14 days after execution, hard copy and electronic file to be sent to CECW-AR
- ◆ CECW-AR to maintain central files for all approved and executed PCA's



# MANAGEMENT CONTROLS

## MSC's Provide Oversight and Quality Assurance for Districts

- ◆ Management control checklist in Appendix C of EC 1165-2-204 for PCA development and negotiation
- ◆ If a material weakness is discovered, district should report it to MSC and specify needed corrective action
  - ◆ MSC will determine whether it must be reported to CECW-BD
  - ◆ Consult AR 11-2 for assistance

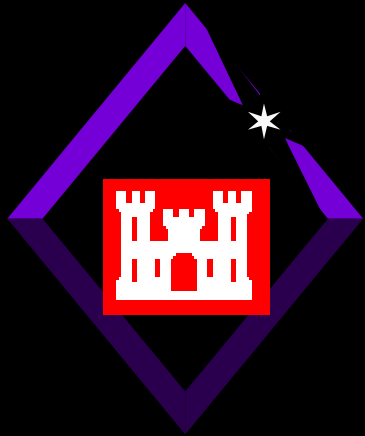


# MANAGEMENT CONTROLS

## (CONTINUED)

- ◆ MSC's should implement a QA program to ensure there are no abuses of delegated authority
- ◆ Yearly, each MSC commander should perform a compliance review of district's use of delegated authority to approve and execute PCA's that follow model PCA's
- ◆ Results due to CECW-A 31 October each year





# MANAGEMENT CONTROLS (CONTINUED)

- ◆ Performance standards for those processing PCA's should include explicit statement of responsibility for management controls specified enough to provide individual accountability